

### **EXHIBIT 3**



By Electronic and Certified Mail

April 8, 2011

Mr. Richard Lewis  
Chief Financial Officer  
UTEX Communications Corp  
1250 S Capital of Texas Hwy; Bldg 2-235  
West Lake Hills, TX 78746

Re: UTEX Communications Corp (Filer ID 825102)  
Rejection of 2009 FCC Form 499-A

Dear Mr. Lewis:

On July 6, 2009, UTEX filed a revised 2009 FCC Form 499-A updating its originally filed 2008 calendar year revenue. For the reasons stated below, USAC has rejected this filing, and has reversed USAC invoice transactions associated with this filing on the March 2011 USAC invoice.

On March 31, 2009 UTEX filed its 2009 FCC Form 499-A reporting calendar year 2008 revenues. Block 4 of the form included a gross universal service contribution base amount of \$1,212,847, of which \$1,203,352 was interstate and subject to federal universal service contribution obligations. This amount was comprised of total local private line revenue on line 406 of \$1,093,253, with \$1,083,758 interstate, and total federal or state universal service recovery revenue on line 403 of \$119,594, with 100% interstate. Block 3 of the form included \$205,215 of carrier's carrier revenue not subject to federal universal service contribution obligations. The revenue reported was comparable to prior Form 499-A filings as well as the revenue forecasted on UTEX's previous year's Form 499-Q filings.<sup>1</sup> USAC reviewed and approved this form on April 14, 2009.

On July 6, 2009, UTEX filed a revised 2009 FCC Form 499-A. Block 4 of the form included a gross federal universal service contribution base amount of only \$129,089, of which \$119,594 was interstate and subject to federal universal service contribution obligations. This amount was comprised of \$9,495 in local private line revenues, none of which were allocated as interstate and subject to federal universal service contribution obligations, and \$119,594 in federal or state universal service recovery revenue. Block 3 of the form included \$1,276,973 of carrier's carrier revenue not subject to federal universal service contribution obligations. During USAC's standard review of UTEX's revised filing, the large shift in revenues from block 4 (End-User) to block 3 (Carrier's

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<sup>1</sup> The total forecasted revenues reported on line 120 of UTEX's Nov. '07, Feb. '08, May '08 and Aug. '08 FCC Form 499-Q filings was \$1,195,334, resulting in a less than 1% difference between UTEX's 2009 Form 499-A and Form 499-Q filings.

Carrier)<sup>2</sup> prompted USAC's outreach to UTEX seeking explanations for the following issues:

- The large shift of revenues between carrier's carrier revenues reported in block 3 and end-user revenues reported in block 4 from UTEX's originally filed 2009 Form 499-A to UTEX's revised 2009 Form 499-A.
- The \$119,594 in federal universal service pass-through charges billed on only \$9,495 in end-user private line revenues.
- Verification that 100% of the \$9,495 in end-user private line revenue was intrastate.

USAC first emailed UTEX about these issues on August 11, 2009.<sup>3</sup> USAC again requested explanations to the above mentioned issues on a conference call with representatives from UTEX, including Joe Martinec on June 4, 2010. USAC followed up with another email on June 8, 2010.<sup>4</sup> In an email dated June 26, 2010<sup>5</sup> Mr. Martinec stated:

"The information you've requested below is being gathered. However, I am in the middle of drafting a disclosure statement and plan. My need for broader information is taxing the support staff of the Debtor, but I should be through in a few days. Unfortunately the email you attached was not discovered until we went back through emails after receiving this copy. I think that when it was received it was not recognized as a specific inquiry. It would have been acted on immediately otherwise."

As of the date of this letter, USAC has received no further response to USAC's questions about the 2009 499-A revision.

To correct any discrepancies between a company's forecasts on its Form 499-Q filings and its actual revenues reported on the corresponding Form 499-A, USAC performs the annual A/Q True Up. UTEX's 2009 A/Q True Up was calculated based on the revenues reported on UTEX's revised 2009 Form 499-A filing. Because the revenue reported on UTEX's revised 2009 499-A form was less than the projected revenue on UTEX's corresponding 499-Q forms, the A/Q True-up process generated credits in the amount of \$104,023.11. These credits were split evenly across UTEX's 3rd quarter 2009 invoices. UTEX filed for Chapter 11 bankruptcy protection on March 31, 2010, making 100% of the true-up credits pre-petition. Those credits were included in a pre-petition Proof of Claim, filed with the United States Bankruptcy Court for the Western District of Texas in May 2010.

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<sup>2</sup> 99% of UTEX's end-user telecommunication revenues were reclassified as federal universal service contribution exempt revenues on UTEX's revised 499-A Filing.

<sup>3</sup> Email from USAC to Richard Lewis, [rlewis@worldcall.net](mailto:rlewis@worldcall.net) (August 11, 2009, 11:44 a.m.).

<sup>4</sup> Email from USAC to Richard Lewis and Joe Martinec, [rich@worldcall.net](mailto:rich@worldcall.net), [martinec@mwvmlaw.com](mailto:martinec@mwvmlaw.com) (June 8, 2010, 9:02 a.m.).

<sup>5</sup> Email from Joe Martinec to USAC (June 21, 2010, 4:23 p.m.).



Mr. Richard Lewis  
UTEX Communications Corp  
April 8, 2011  
Page 3 of 3

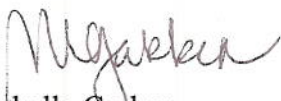
Because UTEX's revised 2009 Form 499-A filing appears to vary significantly from its prior filings, and because of UTEX's repeated non-response to USAC's inquiries concerning the filing, USAC has rejected UTEX's revised 2009 499-A filing submitted on July 6, 2009. USAC has reversed the resulting A/Q True-up credits on UTEX's March 2011 USAC invoice by way of adjustment line items totaling \$104,023.11.<sup>6</sup> USAC has also reinstated the original 2009 Form 499-A filed by UTEX, and will apply the recalculated A/Q True-up totaling charges of \$816.91 in three installments across the 2nd quarter of 2011. These billing adjustments will be applied to the pre-petition period, increasing the pre-petition balance from a credit of (\$131,995.57) to a credit of (\$27,155.55).

If you have information to support your revised 2009 Form 499-A form, you must submit support of that in writing to USAC no later than 30 calendar days from the date of this letter to the following address:

USAC  
Attn: General Counsel  
2000 L Street NW, Suite 200  
Washington, DC 20036

If you wish to appeal this decision, detailed instructions for filing appeals are available at:  
<http://www.universalservice.org/fund-administration/contributors/file-appeal>

Sincerely,

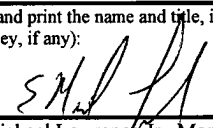


Michelle Garber  
Director of Financial Operations  
USAC

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<sup>6</sup> USAC Invoice UBDI0000478330, March 22, 2011.

## **EXHIBIT 4**

UNITED STATES BANKRUPTCY COURT Western District of Texas		ADMINISTRATIVE EXPENSE
Name of Debtor <b>UTEX Communications Corp.</b>	Case Number <b>10-10599-CAG</b>	<input type="checkbox"/> Check box to indicate that this claim amends a previously filed administrative claim  Court Claim Number:  Filed on:
NOTE: This form should only be used to make a claim for an administrative expense arising after the commencement of the case		
Name of Creditor (The person or other entity to whom the debtor owes money or property):  <b>Universal Service Administrative Company</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Name and address where notices should be sent: <b>Attn: Stefani Watterson, Assistant General Counsel</b> <b>Office of the General Counsel</b> <b>Universal Service Administrative Company</b> <b>2000 L Street NW, Suite 200</b> <b>Washington DC 20036</b> Telephone number: 202-776-0200		
Name and address where payment should be sent (if different from above):		<div style="font-size: 2em; font-weight: bold; margin: 0;">FILED</div> <div style="font-size: 1.2em; font-weight: bold; margin: 5px 0;">MAY 13 2010</div> <div style="font-size: 0.8em; font-weight: bold; margin: 0;">U.S. BANKRUPTCY COURT</div> <div style="font-size: 0.8em; font-weight: bold; margin: 0;">BY <u>                    </u> DEPUTY</div>
<b>1. Administrative Claim:</b> <span style="float: right;"><u><b>\$2,750.50</b></u></span>  <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to principal amount of the claim. Attach itemized statement of all interest or additional charges.  <p>Every interstate telecommunications carrier, including the Debtor, is required by federal law to make contributions to the federal Universal Service Fund ("USF") based on, <i>inter alia</i>, a percentage of its interstate and international revenue. 47 C.F.R. Part 54. The Universal Service Administrative Company ("USAC") administers the USF under the direction of the FCC and, among other things, determines a carrier's USF contribution obligation based on revenue information supplied by the carrier, on a quarterly and annual basis, pursuant to a certified telecommunications reporting worksheet. <i>Id.</i> USAC then invoices the carrier accordingly. <i>Id.</i> USAC also compares a contributor's annual worksheet revenue reported to the sum of its previously filed quarterly reports to determine, among other things, if there is any variance in the revenue reported and, if so, whether a credit(s) or adjustment(s) to the carrier's USF account is warranted (a "true-up"). As a result, USAC reserves its right to amend this proof of claim to seek recovery from the Debtor of additional USF charges resulting from the true-up of the Debtor's reported revenue.</p>		
<b>2. Basis for Administrative Claim:</b> <u>Federal Universal Service Fund Obligations</u>		FOR COURT USE ONLY
<b>3. Period Addressed by Administrative Claim:</b> <u>03/03/2010 thru 04/15/2010 (Monthly charges may continue to accrue)</u>		
<b>4 499 Filer ID by which USAC identifies Debtor:</b> <u>825102</u>		
<b>5. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		
<b>6. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. <b>See Attachment</b>		
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.		
Date  <b>May 7, 2010</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):  <div style="text-align: center; font-size: 1.5em; font-family: cursive;">  </div> <b>E. Michael Lawrence Jr., Mgr, Collections, Universal Service Administrative Company</b>	
<i>Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§152 and 3571.</i>		

**UTEX Communications Corp. (Filer ID 825102)**  
**Chapter 11: 03/03/2010**  
**Western District of Texas / Case#: 10-10599-CAG**  
**Administrative Proof of Claim**

<u>Date</u>	<u>Description</u>	<u>Amount</u>
3/15/2010	RHCSMC	\$36.03
3/15/2010	HCSMC	\$691.52
3/15/2010	LISMC	\$224.34
3/15/2010	SLSMC	\$374.68
4/15/2010	RHCSMC	\$35.91
4/15/2010	HCSMC	\$769.73
4/15/2010	SLSMC	\$366.04
4/15/2010	LISMC	<u>\$252.25</u>
<b>Administrative Claim Amount =</b>		<b><u><u>\$2,750.50</u></u></b>

UNITED STATES BANKRUPTCY COURT Western District of Texas		PROOF OF CLAIM
Name of Debtor <b>UTEX Communications Corp.</b>	Case Number <b>10-10599-CAG</b>	<input type="checkbox"/> Check box to indicate that this claim amends a previously filed claim  Court Claim Number: _____  Filed on: _____
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (The person or other entity to whom the debtor owes money or property):  <b>Universal Service Administrative Company</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Name and address where notices should be sent: <b>Attn: Stefani Watterson, Assistant General Counsel</b> <b>Office of the General Counsel</b> <b>Universal Service Administrative Company</b> <b>2000 L Street NW, Suite 200</b> <b>Washington DC 20036</b> Telephone number: <b>202-776-0200</b>		
Name and address where payment should be sent (if different from above):		<div style="font-size: 2em; font-weight: bold; margin: 0;">FILED</div> <div style="font-weight: bold; margin: 5px 0;">MAY 13 2010</div> <div style="font-weight: bold; margin: 0;">U.S. BANKRUPTCY COURT</div> <div style="margin: 0;">BY  DEPUTY</div>
<b>1. Amount of Claim as of Petition Date:</b> <span style="float: right;"><u>\$Uncertain</u></span> <b>Petition Date:</b> <u>03/03/2010</u>		
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to principal amount of the claim. Attach itemized statement of all interest or additional charges.  <small>Every interstate telecommunications carrier, including the Debtor, is required by federal law to make contributions to the federal Universal Service Fund ("USF") based on, <i>inter alia</i>, a percentage of its interstate and international revenue. 47 C.F.R. Part 54. The Universal Service Administrative Company ("USAC") administers the USF under the direction of the FCC and, among other things, determines a carrier's USF contribution obligation based on revenue information supplied by the carrier, on a quarterly and annual basis, pursuant to a certified telecommunications reporting worksheet. <i>Id.</i> USAC then invoices the carrier accordingly. <i>Id.</i> USAC also compares a contributor's annual worksheet revenue reported to the sum of its previously filed quarterly reports to determine, among other things, if there is any variance in the revenue reported and, if so, whether a credit(s) or adjustment(s) to the carrier's USF account is warranted (a "true-up"). As a result, USAC reserves its right to amend this proof of claim to seek recovery from the Debtor of additional USF charges resulting from the true-up of the Debtor's reported revenue.</small>		
<b>2. Basis for Claim:</b> Federal Universal Service Fund Obligations		<b>5. Amount of Claim Entitled to Priority Under 11 USC §507(a)</b>  Specify the priority of the claim:  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950), earned within 180 days before filing of the bankruptcy petition or cessation of debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).  <input type="checkbox"/> Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).
<b>3. 499 Filer ID by which USAC identifies Debtor:</b> <u>825102</u>  <b>3a. Debtor may have scheduled account as:</b> _____		
<b>4 Secured Claim.:</b> Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information:  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other  <b>Describe:</b> See description in Section 1 above.  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> _____ %  <b>Amount of arrearages and other charges as of time case filed included in secured claim:</b> \$ _____  <b>Basis for Perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.  <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. <b>See Attachment</b>  <small>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</small>		
Date  <b>May 7, 2010</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):   <b>E. Michael Lawrence Jr., Mgr, Collections, Universal Service Administrative Company</b>	<b>FOR COURT USE ONLY</b>
<small>Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§152 and 3571.</small>		



**EXHIBIT 5**

**UTEX Communications Corp. d/b/a**

W. Scott McCollough  
General Counsel

1250 S Capital of Texas Hwy  
Bldg 2-235  
West Lake Hills, Texas 78746

**FeatureGroup**



512.888.1112 (V)  
512.692.2252 (FAX)  
scott@worldcall.net

April 27, 2011

Mike Lawrence  
Collections Manager  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY  
2000 L Street, NW, Suite 200  
Washington, DC 20036

Email: [mlawrence@usac.org](mailto:mlawrence@usac.org)  
FAX: (202)776-0800

USAC  
Attn: General Counsel  
2000 L Street NW, Suite 200  
Washington, DC 20036

Michelle Garber  
Director of Financial Operations  
USAC  
2000 L Street NW, Suite 200  
Washington, DC 20036

RE: 2009 FCC Form 499-A Rejection

Dear Mr. Lawrence:

UTEX Communications Corp. d/b/a FeatureGroup IP ("FeatureGroup IP") received your April, 2011 email and attached letter addressed to Richard Lewis, our CFO. Please accept this as our response.

Your letter states that USAC has "rejected" FeatureGroup IP's revised 2009 499-A, relating to 2008 revenue and has "reversed the resulting A/Q True-up credits on UTEX's March 2011 USAC invoice by way of adjustment line items totaling \$104,023.11." The letter goes on to state that "USAC has also reinstated the original 2009 499-A Form filed by UTEX, and will apply the recalculated A/Q True-up totaling charges of \$816.91 in three installments across the 2<sup>nd</sup> quarter of 2011." It concludes by asserting that USAC has unilaterally applied the "billing adjustments" "to the pre-petition period, increasing the pre-petition balance from a credit of (\$131,995.57) to a credit of (\$27,155.55.) FeatureGroup IP does not necessarily accept any of the calculations underlying the letter, and we believe USAC may not be taking all of the facts in its possession into account as part of its calculation. We are merely restating them as they are presented.

Your letter recognizes FeatureGroup IP is presently in bankruptcy as a debtor-in-possession, and that the amounts in issue are for pre-petition amounts owed to

FeatureGroup IP.<sup>1</sup> Your action unilaterally reduces a credit due to FeatureGroup IP by USAC in the form of pre-petition overpayments, and directly impacts “property of the estate.” To further confuse things, it does so by adjusting an invoice relating to amounts allegedly owed and payable on a post-petition basis. This violates the automatic stay of 11 U.S.C. § 362 in several serious ways.

USAC owes FeatureGroup IP a significant refund, and this refund is property of FeatureGroup IP’s bankruptcy estate. Indeed, prior period restatements understate the amount of the refund only due to the procedures in place at USAC. USAC’s online process prohibits amending 499-A filings past one year from original filing – an artificial and arbitrary cutoff. Contrastingly, the Bankruptcy Code contains no such cutoff. FeatureGroup IP will assert a claim for the additional years in addition to the one year arbitrary cutoff imposed by USAC. In addition, FeatureGroup IP disputes that USAC can lawfully impose or attempt to impose interest or penalties, or insist on effectuating any refunds only through credits to future obligations outside the Bankruptcy Court’s jurisdiction. Because the regulatory squeeze employed by USAC in coordination with certain ILECs to eliminate competition from CLECs affects several bankruptcy cases, the issue has broad impact.

Although the FCC rules delegated some powers to USAC, some of your demands far exceed your delegated powers and responsibilities. Further, your unilateral action illegally interferes with proper operation and resolution of the bankruptcy case. FeatureGroup IP reserves all rights to have any and all disputes or claims regarding the pre-and post-petition matters relating to the estate resolved by the bankruptcy court.

Notwithstanding FeatureGroup IP’s reservations, we provide the following answers on a voluntary basis in an attempt to resolve some of these issues. FeatureGroup IP aspires to work cooperatively with USAC and reach a mutually acceptable result. Failing that, we are willing to consider seeking the FCC’s guidance, but as noted FeatureGroup IP reserves all of its rights under the Bankruptcy Code.

Inconsistent and contradictory regulatory commands and determinations as between the FCC and the Texas PUC create a regulatory squeeze for FeatureGroup IP and certain similar competitors. USAC – acting as an agent for the FCC – classifies and treats the underlying revenues in one manner (end user revenues related to telephone exchange service), while the Texas PUC has made determinations that require a different treatment under FeatureGroup IP’s tariff (exchange access revenue from contributors, and thus “carrier’s carrier” revenues). USAC’s decision to reject the Texas PUC’s determination and require an inconsistent classification leads regulatory “cost trapping” where FeatureGroup IP is forced to bear all of the adverse consequences of each regulatory system, but reap none of the benefits. This leaves FeatureGroup IP and similarly-situated CLECs with no means to recover the costs imposed on it by the respective regulatory systems. Simply put, the same revenue must be classified consistently by the state and federal entities purporting to implement the same regulatory system.

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<sup>1</sup> The letter asserts an incorrect date for the date of the petition in bankruptcy. The petition was filed on March 3, 2010, not March 31, 2010.

FeatureGroup IP, an LEC, prepared the initial reports and remittances based on the Communications Act, the FCC's rules and FeatureGroup IP's federal tariff. Specifically, FeatureGroup IP provided what it reasonably thought was a telephone exchange service to enhanced/information service providers (ESPs). ESP customers were treated as "end users" and the reports included the revenue we received from them as end user revenue. Our revenues were treated for jurisdictional reporting purposes as 100% interstate since our customers' traffic was interstate as a matter of law. When the FCC began imposing a direct USF obligation on Interconnected VoIP providers, we allowed our customers to submit a "resale" certificate that they were a direct contributor, and upon compliance with the rules on independent validation, we treated revenue from those customers as "carriers' carrier" revenue (*e.g.*, not "end user"). Some of our customers took this option, but not all of them did – particularly since some of them do not provide interconnected VoIP service, or not all of their revenue is related to interconnected VoIP service. All of the reports and remittances FeatureGroup IP submitted for several years used this approach, and it was fully consistent with all the rules given the assumptions that were applied.

On June 1, 2009 an arbitrator assigned by the Texas Public Utility Commission issued an "award" in a post-interconnection agreement dispute case between FeatureGroup IP and AT&T Texas, the primary incumbent LEC in Texas.<sup>2</sup> The functional and legal result of the Texas decision, and particularly after applying that decision through the lens of our federal tariff, is that our original assumptions regarding the regulatory classifications of our service, and the services of our customers, and even the identity of our customers, were all rendered incorrect. Our service was functionally deemed to not be telephone exchange service, but instead exchange access service. The award rejected FeatureGroup IP's contentions that the traffic was enhanced/information service traffic from FeatureGroup IP ESP end user customers. Instead, the award found that "most, if not all" of the traffic originated on the PSTN and was "IP-in-the-Middle" traffic, and therefore "telephone toll service" handled by a group of carriers. The award classified the traffic as PSTN-originated based on the presence of an originating traditional telephone number and rated the traffic as "toll" using the telephone rate center associations of the calling and called numbers.<sup>3</sup> The award expressly recognized FeatureGroup IP's rights under its tariff to deem those carriers to be FeatureGroup IP's exchange access customers, and to treat them as such.<sup>4</sup>

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<sup>2</sup> The full Texas Commission later affirmed in part and reversed in part. While the part that was reversed bears on the subject in issue, the order implementing the Texas Commission's decision does not resolve the issue. We strongly disagree with the findings, conclusions and result, and an action seeking review under § 252(e)(6) has been taken to the U.S. District Court for the Western District of Texas. But pending any reversal on appeal, the decision is in effect. We do not intend to provide a comprehensive analysis of the Texas Commission decision in this letter. A copy of the award and the full Texas Commission's later decisions affirming it in part and reversing it in part has already been provided.

<sup>3</sup> On the latter point, the full Texas PUC reversed the Award relating to telephone number based rating, but this part was effectively applied only on a going-forward basis for traffic after September 2007.

<sup>4</sup> We will provide you with references to our tariff upon request. Essentially it provides that any entity that originates telephone toll service traffic and causes it to be delivered to FeatureGroup IP is deemed to be an exchange access customer, and responsible for the resulting exchange access billings.

The effect of the award is that our “customers” were not necessarily the entities we had billed and from whom we had received revenue, but were instead a group of carriers, each of whom is a direct contributor to the fund. In other words, given the Texas PUC’s decision all of the revenue we had reported as “end user” was not “end user” after all. Instead, we were deemed to have a completely different set (or at least additional) customers each of which were and are clearly and demonstrably contributors. Therefore, if and to the extent the Texas PUC decision is honored and depending on the precise years the Texas PUC’s theory is used, 100% of our revenue is “carriers’ carrier.” That is why FeatureGroup IP amended its filing and has continued to report in this fashion. Under the Texas PUC award’s approach and characterization of the traffic involved, FeatureGroup IP is entitled to a complete refund of all amounts FeatureGroup IP has remitted every year to the fund.<sup>5</sup>

The revised reports and all subsequent reports attempted to implement this consequence, in part. The Texas’ PUC’s order is not a model of clarity, has some internal inconsistencies and fails to answer seminal questions related to ultimate liability. Further adjustments may need to be made as part of the bankruptcy process.<sup>6</sup> However, until all related matters – the appeal of the Texas PUC decision and the bankruptcy case, FeatureGroup IP asserts that the fund owes the bankruptcy estate a significant refund that must be paid in cash, and the ultimate amount will exceed that presently indicated in our revised prior year 499-A forms. We do not concur with or accede to the unilateral adjustment under either telecommunication law principles or bankruptcy jurisprudence.

To even further complicate matters, at least one of UTEX’s telecommunications vendors has now announced that because UTEX is listed as a “non-contributor” it will begin treating UTEX’s payments as “end user” and will begin imposing a USF “pass-through” surcharge. Since USAC is appropriating prior credits and applying them to perceived amounts due by UTEX it seems to us that UTEX should at least be deemed a “contributor” if and to the extent your actions remain in effect. On the other hand, if and to the extent the Texas PUC’s determinations remain in effect, then all of UTEX’s revenues should be “carrier’s carrier” and UTEX should be able to so certify to its vendors with the result these vendors would not report UTEX’s revenues as “end user.” Even though under either theory the amounts UTEX pays to its vendors are not properly subject to assessment, once again UTEX is losing both ways. This kind of regulatory

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<sup>5</sup> The actual revenue amounts for the years between 2005 and 2009 may well change depending on the result of FeatureGroup IP’s appeal as well as pending collection actions against the deemed carrier customers in the bankruptcy proceeding and the period in which any revenue adjustments to reflect payment of these claims are booked. Further, the “jurisdiction” may change. If the Texas PUC decision stands then part of the revenues are intrastate switched access and thus not subject to assessment by the federal USF. To date all revenues have been treated as jurisdictionally interstate.

<sup>6</sup> As a single example of the difficulties we face classifying the traffic for regulatory purposes (and thus the identity of the actual customers and therefore the revenue), the full PUC order inconsistently used “numbers” rating for pre-September 2007 traffic but rejects this approach for post-September 2007 traffic. Further, the full PUC order inconsistently accepts the proposition that the pre-September 2007 traffic was subject to access charges but also finds that “some” is “ESP” traffic and *not* PSTN-originated. Finally, there has been no claim by any entity – AT&T or the Texas PUC – that any post-September 2007 traffic was or is PSTN-originated.

RE: 2009 FCC Form 499-A Rejection

squeeze and cost trapping is obviously unreasonable, unlawful, arbitrary and capricious, and UTEX as debtor in possession has a duty to prevent it from occurring.

At the same time, we welcome your collaboration and cooperation; indeed we seek your active assistance in resolving the two apparently conflicting regulatory commands and what appears to be a conflict between the bankruptcy laws and the state and federal regulatory regimes. If USAC wishes to meet and confer so as to exchange additional information and ideas on how this can be sorted out we welcome that as well. Although we do not yet agree to do so, we are also willing to discuss the potential and propriety of using the FCC administrative process to secure a decision by the FCC, at least on an initial basis, subject to ultimate approval, oversight and (if and to the extent it appears reasonable and lawful) implementation of the decision for purposes of FeatureGroup IP's plan of reorganization.

Some of the prior correspondence requested "a list of the company's resellers, including the company name and filer IDs." Some of that information is a matter of public record, some of it has yet to be discovered and some of it we cannot, unfortunately, disclose because it is the subject of a protective order entered by the Texas PUC that is still in force.

The public information is part of the bankruptcy schedules. Please refer to Schedule B2 "OCN Billing Detail." We continue to identify additional companies on occasion, but that is the most current list. To the best of our knowledge and belief, each of the companies on that schedule is a direct contributor to the fund.

Prior correspondence also asks that we "explain the large amount of Federal USF reported on line 403 columns (d) + (e) as it compares to line 420 (d) + (e)." You then go on to note that "[t]elecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark up above the relevant contribution factor." With regard to the latter, our reports are consistent with 47 C.F.R. 54.712(a). Your characterization of the rule varies significantly from the rule's actual words, but more importantly USAC is not the one that enforces that rule, except perhaps to the extent any amount reported might vary from the amount actually received from end users. Here, the amount reported on the revised form is exactly the amount of pass-through revenue FeatureGroup IP actually received.

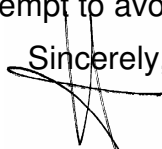
FeatureGroup IP suggests that the parties meet and confer on this complicated set of issues. We can attempt to reach a negotiated result that could then be presented to the bankruptcy court for approval and ultimately implementation in the plan of reorganization. Alternatively, we can discuss the appropriate venue and process for resolution by regulatory or judicial authorities. FeatureGroup IP is relatively indifferent to which regulatory theory prevails. But there can and must be only one consistent theory, and the result cannot be that for Texas PUC purposes the traffic is (and the revenues are) considered to be part intrastate and part interstate "exchange access service" to carriers that are contributors while for FCC purposes the traffic is (and the revenues are) treated as 100% interstate end user. Because this issue is critical to the outcome of FeatureGroup IP's reorganization efforts, and because of the regulatory agencies' inability to reach a consistent treatment of this issue, lack of consensual resolution will result in a proceeding in the Bankruptcy Court.



RE: 2009 FCC Form 499-A Rejection

| Please contact me with any questions or comments. We look forward to working with you to sort this out in an attempt to avoid litigation.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Scott McCollough', is written over the word 'Sincerely,'.

W. Scott McCollough  
General Counsel  
UTEX Communications Corp. d/b/a FeatureGroup IP